# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN MARION,

Defendant-Appellant.

UNPUBLISHED
June 21, 2007

No. 270605
Oakland Circuit Court
LC No. 2005-205045-FH

Before: Fitzgerald, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(*v*). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 18 months to 15 years in prison. Defendant appeals as of right. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

Defendant argues that his trial attorney was ineffective for failing to move the trial court to suppress evidence that the police discovered cocaine on defendant's person. Defendant argues that the police did not have legal justification for arresting him, so the discovery of the cocaine in his possession was fruit of the illegal search and, therefore, subject to suppression. Defendant did not raise the issue of ineffective assistance in the trial court or seek a *Ginther*[1] hearing below, so we limit our review of defendant's claims to mistakes apparent on the record. *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003). "To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense." *Id*. at 140.

Evidence obtained in the course of a violation of a suspect's constitutional rights is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). The arresting police officer in this case testified to the relevant events. While in uniform and driving a marked patrol car, the officer saw defendant approach the drivers of two vehicles as they were waiting for drive-through service at a fast-food restaurant. Defendant was carrying a duffel bag and a plastic bag. He spoke to the drivers but began to walk away when he spotted

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

the officer. The officer spoke to one of the drivers and determined from the exchange that he should speak to defendant about violating a local ordinance that prohibits soliciting under those circumstances. The officer walked after defendant, who soon began to run. The officer observed defendant run to the dead end of an alley, then jump a fence into a residential yard. The officer then saw defendant between two houses, and defendant ran back into the yard after spotting the officer. The officer left his patrol car, caught up with defendant on foot, and took him into custody. Before he was placed in the patrol car, the officer searched defendant and discovered a small quantity of cocaine in his pocket.

Defendant argues that under these circumstances the officer did not have probable cause to place him under arrest, so what the officer discovered in the search incident to his arrest was the fruit of a poisonous tree. See *People v Sands*, 82 Mich App 25, 33; 266 NW2d 652 (1978). We disagree. "The police may arrest an individual without a warrant if a felony has been committed and there exists probable cause to believe that the defendant committed the felony or *if the defendant committed a misdemeanor in the officer's presence*." *People v Dunbar*, 264 Mich App 240, 250; 690 NW2d 476 (2004) (emphasis added), citing MCL 764.15. Section 12-6(c) of the local ordinance prohibits soliciting "money or other things of value" in certain locations, including from "any operator of a motor vehicle that is in traffic on a public street," [w]ithin 15 feet of any valid licensed vendor location," or "[w]ithin 15 feet of the entrance or exit from a building, public or private, including . . . any . . . business . . . ." We have no doubt that defendant's conduct, as the arresting officer described it, reasonably led the officer to believe that defendant ran afoul of one, if not all, of these provisions while the officer was looking on.

Defendant argues that "there was no probable cause to stop and search" him, because "[t]here was no record evidence that he was soliciting . . . ." We disagree. "Probable cause is found when the facts and circumstances within an officer's knowledge are sufficient to warrant a reasonable person to believe that an offense had been or is being committed." *Dunbar*, *supra*. In this case, the arresting officer had ample, first-hand information that defendant had solicited money from the drivers in his presence. He then confirmed that defendant had violated the ordinance against soliciting and saw defendant flee. Therefore, defendant's arrest, especially after he fled from the officer, was reasonable. Because the police officer observed defendant commit the misdemeanor and was thus entitled to place defendant under arrest, the officer was also entitled to search defendant for weapons or other evidence. *People v Houstina*, 216 Mich App 70, 75; 549 NW2d 11 (1996). Therefore, the cocaine discovered on defendant's person was lawfully seized and admissible at trial. "Trial counsel is not required to advocate a meritless position." *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000). Because defense counsel had nothing to gain from seeking to suppress the cocaine seized in the search incidental to defendant's lawful arrest, defendant's claim of ineffective assistance predicated on challenging the legality of that arrest, and the subsequent search must fail.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Peter D. O'Connell